

DOCKET FILE COPY ORIGINAL

RECEIVED

JAN 27 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In Re Applications of)	
)	File Nos. 00012-CN-L-95;
PAGEMART II, INC.)	00018-CN-L-95; 00024-CN-
)	L-95; 00030-CN-L-95;
Request for Waivers or)	00036-CN-L-95
Conditional Grant)	

**REQUEST FOR WAIVERS OF COMMISSION'S RULES
OR CONDITIONAL GRANT OF LICENSES**

PageMart II, Inc. ("PageMart"), by its attorneys and pursuant to Section 22.19 of the Commission's Rules, 47 C.F.R. § 22.19, hereby requests waivers of certain FCC requirements relating to regional narrowband PCS systems, or alternatively a conditional grant of the above-referenced applications. As PageMart explains below, the requested action would serve the public interest in efficient regulation.

I. INTRODUCTION

PageMart is a rapidly growing, innovative communications company, dedicated to providing cutting-edge, low-cost messaging services on a nationwide basis. The company is a leader in the implementation of advanced

telecommunications technologies and has participated in both of the Commission's auctions for narrowband Personal Communications Service ("PCS") licenses.^{1/}

As set forth in a public notice recently issued by the Commission,^{2/} PageMart was the high bidder on five coordinated regional narrowband PCS licenses in the FCC's auction that ended on November 8, 1994. If these licenses are granted to PageMart, the company will hold licenses on the same frequency in each region of the United States, effectively providing PageMart with a nationwide authorization to offer narrowband PCS.

By this request, PageMart seeks FCC recognition of this de facto nationwide status. Another, similarly situated high bidder at the regional narrowband auction, Advanced Wireless Messaging, Inc. ("Advanced Wireless"), in an exhibit to its applications,^{3/} has made similar requests

^{1/} PageMart was the high bidder on, and has received, a nationwide unpaired 50 MHz narrowband PCS license. See File No. 28055-CN-P/L-94 (license issued Sept. 29, 1994).

^{2/} Report No. CN-95-1, Applications Accepted for Filing (Dec. 9, 1994).

^{3/} See Applications of Advanced Wireless, Exhibit III, File Nos. 00015-CN-L-95; 00021-CN-L-95; 00027-CN-L-95; 00033-CN-L-95; 000393-CN-L-95 (filed Nov. 23, 1994).

in connection with the licenses for which it was applying. Specifically, Advanced Wireless has asked that the Commission grant "waivers of its technical, operational and licensing requirements" or, alternatively, "condition the license[s] of Advanced Wireless" such that, in either case, Advanced Wireless would enjoy the efficiencies of being regulated as a nationwide carrier. PageMart seeks the same treatment.

II. REQUESTED ACTION

Specifically, PageMart requests waivers of those rules that are designed to regulate discrete regional licensees for the benefit of neighboring licensees. Examples of such rules include the limitation on effective radiated power in regional border areas and the build-out requirements that measure progress against regional network deployment, rather than nationwide deployment. 47 C.F.R. §§ 24.132, 24.103(b). Other rules that should be waived include those requiring use of different call signs in each region, even though a network operates nationwide, and those

that discourage efficient, network-wide record-keeping. Id.
§ 22.213 (b).^{4/}

PageMart wishes to clarify that, although it is requesting nationwide treatment, it does not seek a single nationwide license. Rather, PageMart seeks to be awarded five regional licenses on the same frequency, with waivers of certain of the rules that apply to such licenses, so long as the licenses are held by the same entity (or by affiliates controlled by the same parent). At such time as one or more of the licenses were transferred out of PageMart's control, the waivers sought here would no longer apply to such licenses.

PageMart's request could most easily be addressed by granting waivers of the Commission's rules in the above-described circumstances. Advanced Wireless has requested, in the alternative, that its licenses be granted subject to the condition that the group of five licenses be regulated as a nationwide license. PageMart would not object to this latter procedure, so long as five distinct licenses were issued.

^{4/} This list of rules that should be waived in the case of de facto nationwide licensees, such as PageMart, is intended to be illustrative, not exhaustive.

III. BENEFIT TO THE PUBLIC INTEREST

PageMart agrees with Advanced Wireless that the requested waivers would promote competition, mitigate the distorting effects of incongruous regulation, and encourage the rapid deployment of networks. Moreover, granting the waivers will reduce bureaucratic inefficiencies and serve the principles embodied in the policy of regulatory parity.

There is little question that the Commission has always contemplated geographic aggregation of regional licenses. Indeed, facilitating aggregation, where it represents the most economically sound use of spectrum, is one of the key goals of the simultaneous, multiple round auction method.^{5/}

The Commission should now conform its regulatory structure to accommodate the aggregation that it has encouraged. For example, where a single entity is the licensee in contiguous areas, it makes little sense to impose the same effective radiated power limits that apply where the contiguous licensees are distinct entities. As Advanced Wireless suggests, this kind of inefficiency represents a pure economic loss that will delay service to

^{5/} See Third Report and Order, PP Docket No. 93-253, FCC 94-98, ¶ 19 (released May 10, 1994).

the public and result in higher prices for consumers. Similarly, assigning five call signs to an entity that operates a nationwide network is wasteful of precious FCC resources and imposes an unnecessary burden on licensees.

Granting PageMart's request will also bolster competition among narrowband service providers. The nationwide auction was characterized by a handful of players capturing the majority of licenses. These firms have all already been granted their licenses and will soon begin constructing networks. The high bidders on coordinated regional licenses, such as PageMart, must still wait for their licenses to be granted and will begin the race to deploy networks trailing the nationwide licensees by several months. To impose the unnecessary regulatory burdens attendant with regulation as a "regional" licensee will handicap these firms even further, and likely undermine their ability to compete with larger concerns.

IV. CONCLUSION

In other contexts, the Commission has demonstrated its commitment to rational regulation, designed to implement efficiently its underlying policy goals. PageMart's request is designed to facilitate such rationality by avoiding the application of rules that were designed for a situation in

which regional licensees did not hold the licenses for adjoining regions. Where this factual premise does not obtain -- as is the case with PageMart and Advanced Wireless -- the Commission's rules are inefficient, and waivers are appropriate. For this reason, PageMart urges that the Commission take the requested action.

Respectfully submitted,

PAGEMART II, INC.

BY: /s/ Phillip L. Spector
Phillip L. Spector
Jon C. Garcia
PAUL, WEISS, RIFKIND, WHARTON &
GARRISON
1615 L Street, N.W.
Suite 1300
Washington, D.C. 20036
(202) 223-7300

Its Attorneys

December 19, 1994

DateRecd : 12/12/94

SenderName : Cyrus K. Dam

SenderFirm : Survivors Trust

Type : ~~Petition~~ *Ex Parte*

Issue : Amend Section 95.813

Comment : Consider the issues by Interactive Television Association in its
Petition filed 10/21/94 for IVDS system licenses.

AssignedTo :

AssignDT :

ResponseDue :

DateMailed :

Land Mobile

W.B.

1/3

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street NW
Room 814
Washington, DC 20554

November 19, 1994

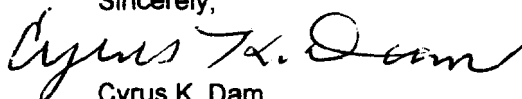
Dear Chairman Hundt:

My name is Cyrus K. Dam and I was a successful bidder in the recent Interactive Video and Data Service auctions. I am writing to you to request that you seriously consider the issues raised by the Interactive Television Association (ITA) in its Petition for Rulemaking filed with the Commission on October 21, 1994 (Petition). As you know, the frequency band for IVDS is divided into two (2) segments and each is licensed to a different entity. In its Petition, ITA is requesting that the Commission institute a Rulemaking Proceeding to amend Section 95.813 of the Commission Rules by deleting subsection (b)(1) which prohibits an entity from owning both IVDS system licenses or an interest in both IVDS system licenses for the same service area. Retention of this prohibition will seriously impair the development of the IVDS industry.

A number of major communication companies are developing hard wire interactive technology and, in some cases have begun offering it to subscribers. In order to successfully compete with these huge companies, the two IVDS licensees in each market need to be able to work together to provide IVDS service to subscribers rather than having to compete against one another as well as against the telecommunications giants offering hard wire interactive services.

For these reasons, I ask that you institute a rulemaking proceeding to amend the current Commission Rules and allow the two IVDS licensees in each market to work together to provide IVDS service to subscribers.

Sincerely,



Cyrus K. Dam
Survivors Trust